Filed 5/7/19 Capistrano Unified School District v. County of Orange CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CAPISTRANO UNIFIED SCHOOL DISTRICT,

Plaintiff and Appellant,

v.

COUNTY OF ORANGE et al.,

Defendants and Respondents.

G056177

(Super. Ct. No. 30-2017- 00963064)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kim Garlin Dunning, Judge. Affirmed.

Orbach Huff Suarez & Henderson, David M. Huff and Stan M. Barankiewicz II for Plaintiff and Appellant.

Leon J. Page, County Counsel and Nicole M. Walsh, Deputy County Counsel for Defendants and Respondents County of Orange, Chris Uzo-Diribe, Khalid Bazmi and Shane Silsby.

Jeanne E. Scherer, Chief Counsel, Jeffrey R. Benowitz, Deputy Chief Counsel, Glenn B. Mueller and John Frederick Smith, Assistant Chief Counsels, and Vanessa C. Morrison, Deputy Attorney for Defendant and Respondent Department of Transportation.

Nossaman, Robert D. Thornton, Benjamin Z. Rubin, Elizabeth Klebaner, and David J. Miller for Defendant and Respondent Foothill/Eastern Transportation Corridor Agency.

* * *

I. INTRODUCTION

This is a statute of limitations case under the California Environmental Quality Act (CEQA). There are three possible statutes of limitations under CEQA: extremely short – 30 days; almost as extremely short – 35 days; and short – 180 days. (See Pub. Resources Code, § 21167.[1]) In this case, a school district, the Capistrano Unified School District (Capistrano), filed a writ petition against three government agencies, the County of Orange (the County), the Foothill/Eastern Transportation Corridor Agency (the Corridor Agency) and the California Department of Transportation (CalTrans), alleging various CEQA violations committed by the three agencies in the process of approving a bridge over the Oso Parkway in southern Orange County. The writ petition was filed December 20, 2017, which was about: (1) a year and a half after the County filed what in CEQA language is called a "Notice of Determination" (NOD) saying the bridge project would not have a significant effect on the environment; (2) more than eight months after the Corridor Agency entered into an agreement with the County to proceed with the project; and (3) more than nine months after CalTrans had entered into an agreement with the County authorizing the County to construct the bridge

1 All further statutory references are to the Public Resources Code.

as part of a connection to the existing 241 Toll Road (the 241). The trial court dismissed Capistrano's petition because it was time-barred. We affirm.

II. FACTS

The 241 currently extends from its "T" intersection with the 91 Freeway in eastern Anaheim in northern Orange County to Oso Parkway in southern Orange County. From there, a traveler could drive southwest on Oso Parkway to get to Interstate 5, aka the Santa Ana Freeway. To the south of where the 241 currently ends, a new community known as Rancho Mission Viejo is being built. Currently, a resident of Rancho Mission Viejo would have to go northwest on La Pata Avenue to Oso Parkway, then travel east on Oso Parkway to find the 241 and take it north to get to the most populous parts of the county. However, a new major highway – not the subject of this appeal – is being built that will connect Rancho Mission Viejo with the 241. The new highway will be called the Los Patrones Parkway. The Los Patrones Parkway will be a de facto extension of the 241 as it heads south after the Oso Parkway off-ramp. Los Patrones will then terminate at an east-west roadway farther south known as Cow Camp Road. The connector between the 241 and the Los Patrones Parkway is a bridge over Oso Parkway which is the subject of this appeal.[2]

On June 14, 2016, the County filed an NOD for the "Oso Parkway Bridge Project." The NOD was posted that same day. The NOD was signed by a "Planner" for the County, Chris Uzo-Diribe. The significant language bearing on this case is the project description, which said: "**Project Description**: The County of Orange (County), OC Public Works Department, along with the Foothill/Eastern Transportation Corridor Agency (F/ETCA), in cooperation with the California Department of Transportation (Caltrans) District 12, is proposing to implement the Oso Bridge Parkway Project (Project) [i.e., build the Oso Parkway Bridge]. The F/ETCA proposes to replace the

[2] Some of us find detailed written textual descriptions of geographic locations rather daunting, so we attach a map to this opinion as Appendix A.

existing Oso Parkway elevated roadway with a bridge and to close the gap between the southern terminus of State Route 241 (SR-241) and the northern terminus of the approved alignment for Los Patrones Parkway in South Orange County." The NOD also described the approving document as an addendum to final environmental impact reports 584 and 589 (called F584 and F589 in the NOD).[3]

On February 2, 2017, the County and CalTrans executed a "Freeway Agreement" which authorized the County to construct the Oso Parkway Bridge as a connection between the existing 241 and Los Patrones Parkway. On March 28, 2017, the Corridor Agency approved a "2017 Cooperative Agreement" under which the County would construct the bridge and convey it to the Corridor Agency, which would eventually transfer it (after the toll road is paid off) to CalTrans. The agreement with the Corridor Agency was also formally approved by the County, as shown by regular minutes of the County's Board of Supervisors, filed the same day.

Nine months later, on December 20, 2017, Capistrano filed a petition for writ of mandate against the County, the Corridor Agency, and CalTrans. Capistrano also sued Uzo-Diribe, the planner who signed the County's NOD; Shane Sisby, the County's Public Works Director; and Khalid Bazmi, the County's Assistant Director of Public Works, in their official capacities. The petition alleged the bridge would cause "significant unmitigated impacts" (not otherwise described) to two nearby schools operated by Capistrano: Tesoro High School and Esencia School.

All defendants filed demurrers to Capistrano's petition based on the running of the applicable statute of limitations. Capistrano then retreated on one issue. It conceded that the March 28, 2017 cooperative agreement between the County and the Corridor Agency barred its cause of action for CEQA violations against the Corridor Agency. However, Capistrano maintained other of its causes of action against the

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3 We attach the NOD as Appendix B.

Corridor Agency (for injunctive and declaratory relief) were viable on the theory that the Corridor Agency, as a "responsible agency" under CEQA, has a continuing obligation to consider any new CEQA document connected with the bridge. Capistrano also maintained that the March cooperative agreement did not start the statute of limitations running because the County never formally approved the bridge project. The trial court concluded that all causes of action against all defendants were time-barred. A judgment of dismissal was filed in March of 2018, and from that judgment Capistrano now appeals.

III. DISCUSSION

A. *A Quick Overview of CEQA's Statute of Limitations*

CEQA's three possible statutes of limitations are set forth in section 21167. As noted, they are short – none longer than 180 days. The key Supreme Court case on CEQA statutes of limitations is *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32 (*Green Foothills*).

The model of section 21167 proffered in *Green Foothills* is simplicity itself. There are only three possibilities: If the lead agency (that is, the government entity primarily responsible for environmental review of a project) files an NOD, the statute is 30 days from the filing. If the lead agency files a notice of exemption (an NOE), the statute is 35 days. And finally, if the lead agency files no notice at all, the statute is 180 days. (See *Green Foothills*, *supra*, 48 Cal.4th at pp. 44, 48.) Thus, the most forgiving possibility is a 180-day statute of limitations.[4]

Appellate case law has outlined three exceptions to the two very short (30 and 35 day) statutes of limitations:

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[4] The text of section 21167, subdivision (d) suggests that if there is no notice and no approval, the statute begins running "within 180 days from the commencement of the project." Capistrano equates "commencement" with actual construction, but cites no cases to that effect. Given our determination that the NOD and the approvals in this case were effective to start the statute running, we need not reach the issue of what precisely the Legislature meant by "commencement of the project."

First, if the NOD or NOE is not posted by the county clerk (even though it has been filed), the 30-day statute will be excused, and the 180 day statute applies. (*Citizens of Lake Murray Area Assn. v. City Council* (1982) 129 Cal.App.3d 436, 438, 440-441.) Moreover, not only must the notice be posted, but posted for a full 30 days. (See *Latinos Unidos de Napa v. City of Napa* (2011) 196 Cal.App.4th 1154, 1159 [notice must be posted for the entire last 30th day to satisfy the 30-day posting requirement, not taken down at 10 a.m.].)

Second, if the lead agency's NOD or NOE is defective on its face, the 180-day statute applies. (See *International Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265, 273.) Defectiveness is a matter of whether the NOD or NOE provides the *content* required by CEQA regulations, known as "Guidelines." (See *Green Foothills, supra*, 48 Cal.4th at pp. 53-54.[5]) In evaluating whether the NOD or NOE provides the required content, the test is "substantial compliance," not rigorous compliance. (*Green Foothills, supra*, 48 Cal.4th at pp. 52-53; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 524.)

Third and last, if the lead agency jumps the gun and files an NOD or NOE prior to actually approving the project (whatever the project may be), the 30- or 35-day statute is excused, and again the 180-day statute applies from the approval date. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 962-963] (*El Dorado Water*); *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 412 [following *El Dorado Water*].)

There is no issue raised in this appeal as to the posting of the NOD. We therefore proceed to the two remaining exceptions – the form of the NOD and the various approvals associated with it.

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5 All references to any "Guideline" in this opinion are to a section of title 14 of the California Code of Regulations.

B. *The County's June 2016 NOD*

The first line of attack for a party seeking to avoid the 30-day CEQA limitations period started by an NOD is to challenge the NOD as defective. Here, Capistrano makes three arguments the County's June 14 NOD was defective: (1) It was filed by a mere bureaucrat – a County planner; (2) it contained a "misleading, inaccurate" description of the bridge project "disguising the true nature of the project"; and (3) no copy of the NOD was actually filed with the state Office of Planning and Research (OPR).

We begin with (1), the County NOD's supposed invalidity because of County staff's involvement. We don't see this as a flaw. The Supreme Court's decision in *Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 513-514, (*Stockton*) is squarely on point.

In *Stockton*, the city's director of community development initialed and returned a letter from a project proponent's attorney agreeing the project had been approved, then filed an NOE himself. (*Stockton, supra,* 48 Cal.4th at pp. 492-493.) Project opponents later sued, arguing that the director didn't have the authority to file the NOE, hence the NOE was invalid and the project hadn't actually been *approved*, thus invoking the premature notice problem dealt with in *El Dorado Water*. The trial court agreed with the opponents as did a majority of the appellate court, but a unanimous Supreme Court reversed and held the NOE *was* valid. The court proffered two reasons. First, the director acted under his "*ostensible* authority" in filing the NOE, so, at most, any lack of actual authority would merely excuse the need to exhaust administrative remedies prior to filing suit. (See *Stockton, supra*, 48 Cal.4th at p. 506, citing Court of Appeal's dissent with approval.) The lack of actual authority did nothing to prevent the statute of limitations from beginning to run. (See *id*. at p. 506.)

And second, even the outright "misuse" of the director's "authority" wouldn't prevent the NOE from starting the statute of limitations. Opponents still should

have brought their suit in a timely manner and would *then* have been "free to argue" the approval was improper. (*Stockton, supra*, 48 Cal.4th at p. 507.)

The *Stockton* court also distinguished *El Dorado Water* – the case that is usually cited for the proposition that a project must be approved before an NOD or NOE can be filed. It said *El Dorado Water* was different because the agency there had "authorized only *preliminary* steps toward a *possible future* project approval." (*Stockton, supra*, 48 Cal.4th at p. 508, italics added.) By contrast, in *Stockton* the director's letter, rightly or wrongly, had committed the city to a "definite course of action" in regard to the project application. (*Id*. at p. 508.)

Capistrano makes no attempt to distinguish *Stockton* on the issue of the validity of staff approval at the lead agency level – there approval by a director, here by a planner. In fact, *Stockton* is nowhere mentioned in Capistrano's briefing, including its reply brief.[6] It seems to us to address the issue clearly.

Capistrano's second argument about the purportedly misleading quality of the NOD is squarely refuted by both *Green Foothills* and *Stockton*. Both Supreme Court cases upheld notices that were comparable to the one at bar.

First, *Green Foothills*: There, two trails were proposed to cross lands owned by Stanford University. The trails were called "S1" and "C1." (*Green Foothills, supra*, 48 Cal.4th at pp. 39-40.) A revised NOD described both trails. But while a supplemental environmental impact report had been prepared for the S trail, none had been prepared for the C trail. Project opponents thus asserted the NOD improperly included the C trail, which didn't have a supplemental EIR. (*Id.* at p. 53.) But the Supreme Court rejected the argument. It was enough that the notice identified all the "applicable" EIR's (Environmental Impact Report) and SEIR's (Supplemental Environmental Impact Report) for the project; there was no need to "explain" how those

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6 The County cited *Stockton* in its respondent's brief.

EIR's and SEIR's "related to the C1 trail." (*Ibid.*) "We decline to impose additional requirements for an NOD beyond those described in the Guidelines." (*Ibid.*)

Green Foothills thus disposes of Capistrano's argument that somehow the County's project description was inaccurate because the NOD was "bootstrapped" (probably the wrong word – "grafted" would have been more accurate) onto another project that had previously been environmentally reviewed – in this case the FEIR's filed for Rancho Mission Viejo back in the mid-aughts. *Green Foothills* rejected a parallel "bootstrap" argument – indeed the very word was used[7] – regarding the C1 trail. (*Green Foothills, supra*, 48 Cal.4th at p. 53.)

Capistrano tries to distinguish *Green Foothills* on the theory that in *Green Foothills* there was only one applicant (Stanford), while here there are two (the County and the developer of Rancho Mission Viejo). But the difference is immaterial. If there was no need to explain the relationship between the C1 trail and the reviewed S1 trail in *Green Foothills*, there should be no need to explain the alleged relationship of the bridge to previous EIRs here. What's more, no one could read the project description here and think that the project being developed is anything other than what the description said: a bridge over Oso Parkway. We conclude there is no meaningful difference between the bridge over Oso Parkway in the case before us and the C1 trail in *Green Foothills*.

And *Stockton* doubly refutes Capistrano's inaccuracy argument. *Stockton* is remarkable in that the Supreme Court held the NOE started the statute running for a new Wal-Mart big box store even though the NOE never even mentioned the word "Wal-Mart." (*Stockton, supra*, 48 Cal.4th at pp. 513-514.) Rather, it was enough the NOE mentioned development on a certain number of acres in the area and did not did not contain a "material falsehood." (See *Id.* at p. 515.) The NOE passed muster even if it

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[7] We can only speculate that Capistrano's use of the word "bootstrap" in its reply brief was inspired by the use of that word by project opponents in *Green Foothills*, also to argue against the validity of an NOD. (*Green Foothills, supra*, 48 Cal.4th at p. 53.) We are unable to square the word's common meaning with its usage here, but we acknowledge that usage has become part of the lexicon in this line of cases.

could have been "clearer and more informative." (*Ibid*.) Again, the County's NOD here is at least as informative as the NOE in *Stockton*.

The third challenge to the County's NOD is Capistrano's argument concerning the County's alleged failure to file it with the state OPR. The argument originates in Guideline 15094(d), quoted in the margin, which provides that *if* the project requires "discretionary approval" from any "state agency," the lead agency shall file a copy with the OPR.[8] The OPR argument fails by virtue of the statutory language setting up CEQA's statute of limitations, section 21167.

Subdivisions (b), (c), (d), and (e) of section 21167 set out the notice filing requirements in the statute.[9] These subdivisions refer to two filing statutes, sections 21108 and 21152. Section 21108 by its terms does not apply to counties, because it only mentions what a "state agency" should do under various circumstances. Section 21152

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[8] Guideline 15094(d) provides: "If the lead agency is a local agency, the local lead agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located, within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research."

[9] "(b) An action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

"(c) An action or proceeding alleging that an environmental impact report does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

"(d) An action or proceeding alleging that a public agency has improperly determined that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172 shall be commenced within 35 days from the date of the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

"(e) An action or proceeding alleging that another act or omission of a public agency does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152."

does refer to counties. And in both subdivisions (a) and (b) of section 21152 the only filing requirement is to file with the county recorder.[10]

Thus whatever the import of Guideline 15094(d) insofar as it relates to discretionary decisions by a *state* agency, it does not affect CEQA's statute of limitations as spelled out in section 21167.[11] As far as the County is concerned, the 30-day statute of limitations in section 21167 began to run in June 2016, making Capistrano's challenge against the County very late.

C. *The February and March 2017 Approvals*

Another strategy for those seeking to avoid a CEQA time-bar is to challenge the lead agency's approval as not really an "approval," thus rendering the respective NOD or NOE ineffective under the rule of *El Dorado Water*. In that regard Capistrano challenges two documents as not real "approvals": A February 2, 2017 "freeway contract" between CalTrans and the County and a March 28, 2017, cooperation agreement between the Corridor Agency and the County.

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10 "(a) If a local agency approves or determines to carry out a project that is subject to this division, the local agency shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings, and indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

"(b) If a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172, and the local agency approves or determines to carry out the project, the local agency or the person specified in subdivision (b) or (c) of Section 21065 may file a notice of the determination with the county clerk of each county in which the project will be located. A notice filed pursuant to this subdivision shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings. A notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

"(c) A notice filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. A notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 12 months.

11 The County argues that CalTrans took no "discretionary" action on the bridge project, thus Guideline 15094(d) was never triggered. We need not decide that issue, given that in section 21167 the Legislature never linked the need to file an NOD or NOE with the OPR to the running of the statute of limitations.

The test for approval has been articulated by the Supreme Court in *Stockton*: "Under CEQA, 'approval' of a project is 'the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person.'" (*Stockton, supra*, 48 Cal.4th at pp. 505-506, quoting Guidelines § 15352.) Thus in *Stockton,* a director's letter was enough to constitute a valid approval: "Right or wrong, the letter's purpose was to *commit* City to a definite course of action in regard to Wal-Mart's application to build the store. The filing of an NOE with regard to this approval thus caused the 35-day limitations period to begin." (*Stockton, supra*, 48 Cal.4th at p. 508, italics added.) Our task here is to apply this commitment test to the two documents before us.

We now apply the commitment test to the two challenged documents at hand.

1. *The Freeway Agreement*

As regards CalTrans, Capistrano argues that there was no "approval" because CalTrans "never formally approved the Bridge Addendum as a responsible agency." And yet at paragraph 113, in its prayer for relief, Capistrano stated: "District is entitled to preliminary and permanent injunctions under Code of Civil Procedure §§ 526 and 527 in that *Respondents and Defendants' approvals* of the Bridge Addendum and the Oso Parkway Bridge Project will continue to cause District and the public irreparable harm by experiencing significant environmental impacts from the Oso Parkway Bridge Project's construction and operation." (Italics added.) Even more telling, in paragraph 119, the petition flat out states: "*TCA and CalTrans approved the Oso Parkway Bridge Project without conducting any CEQA review.*" (Italics added.) Those sound to us like recognition of commitment to the project.

Admissions made in a pleading are binding on the pleader for purposes of demurrer. (E.g., *St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.* (2003) 111 Cal.App.4th 1234, 1248.) "[A] defendant may rely on the complaint's factual

allegations, which constitute judicial admissions." (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 222, fn. 3.)) Capistrano's own admission that CalTrans approved the bridge project disposes of any CEQA claims against it.

We need only add, apropos *Stockton*, that the test of commitment is not some "formal approval" by an agency. The case law – *Stockton* in particular – is clear that a step that commits the agency to a course of action is enough. Here, CalTrans ineluctably committed to the bridge project by agreeing that the County could proceed with it. The commitment also bound the County, by authorizing it to proceed after it requested authorization. Thus both agencies "approved" the bridge in February 2017. Even if we were to find the County's June 2016 NOD did not start the statute of limitations running, the February 2017 freeway agreement certainly did.

2. *The March 28 Cooperation Agreement*

Capistrano has already admitted that the March 28, 2017 cooperation agreement started the statute running against the Corridor Agency, so its CEQA claims against the Corridor Agency are barred. As Capistrano tells us in its reply brief: "The District does not dispute that [the Corridor Agency] formally approved the Cooperative Agreement in 2017 and agrees that its third cause of action (Compel Review of the Bridge Addendum) as to TCA is barred by the statute of limitations. [1 CT 203:3-6.]" We need proceed no further on the point except to note there was a formal approval of the March 28, 2017 agreement by the County Board of Supervisors as reflected in the board's minutes. So it turns out that Capistrano's CEQA claims against the County are triply time-barred.

D. *Residual Issue: Lead Versus Responsible Agencies*

Capistrano tries to salvage its causes of action for injunctive and declaratory relief against the Corridor Agency or CalTrans on the theory that regardless of any CEQA violations alleged, both entities, as "responsible" agencies under CEQA, have a *continuing* duty to monitor the Oso Bridge project for any CEQA violations.

Capistrano's authority for its continuing duty rationale is Guideline 15096, which applies to responsible agencies.[12]

As background, we note the difference between "lead" and "responsible" agencies in CEQA terminology. The "lead agency" is defined as the government entity "which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." (§ 21067.) Lead agencies, in fact, *cannot* delegate their environmental review to another body. (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 712-713.) Responsible agencies, by contrast, are defined as those bodies "other than the lead agency" which have "responsibility for carrying out or approving a project." (§ 21069.)

However, neither the word "continuing," nor any equivalent, is found in Guideline 15096. The focus of the Guideline is that the *responsible* agency should consider a specific EIR or negative declaration, make its own determination, and assist the lead agency in preparing any necessary environmental documents. (See subds. (a) & (b).) Essentially, Capistrano's argument regarding its claims against the Corridor Agency and CalTrans for injunctive and declaratory relief seems to be that at some point in the *future*, the County might have to prepare some other EIR or negative declaration, and the two agencies should be mandated to veto it.

This is premature. We cannot reinterpret clear legislative language on the basis that something bad might yet happen in the future. Declaratory and injunctive relief require *current* controversies, not hypothetical future ones. (See *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1355 [declaratory relief]; *Del Cerro Mobile Estates v. City*

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12 Here are the pertinent parts of subdivisions (a) and (b) of Guideline 15096:

"(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

"(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA."

of Placentia (2011) 197 Cal.App.4th 173, 186 [applying need for ripeness to injunctive relief as well as declaratory relief].) "Facts and not conclusions of law must be pleaded which show a controversy of concrete actuality as opposed to one which is merely academic or hypothetical . . . ." (*Wilson v. Transit Authority* (1962) 199 Cal.App.2d 716, 722.) Given that all of Capistrano's allegations of CEQA violations on the part of the Corridor Agency and CalTrans are time-barred, its claims for injunctive and declaratory relief do not have any independent existence, and thus must fall with Capistrano's CEQA claims.

IV. DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

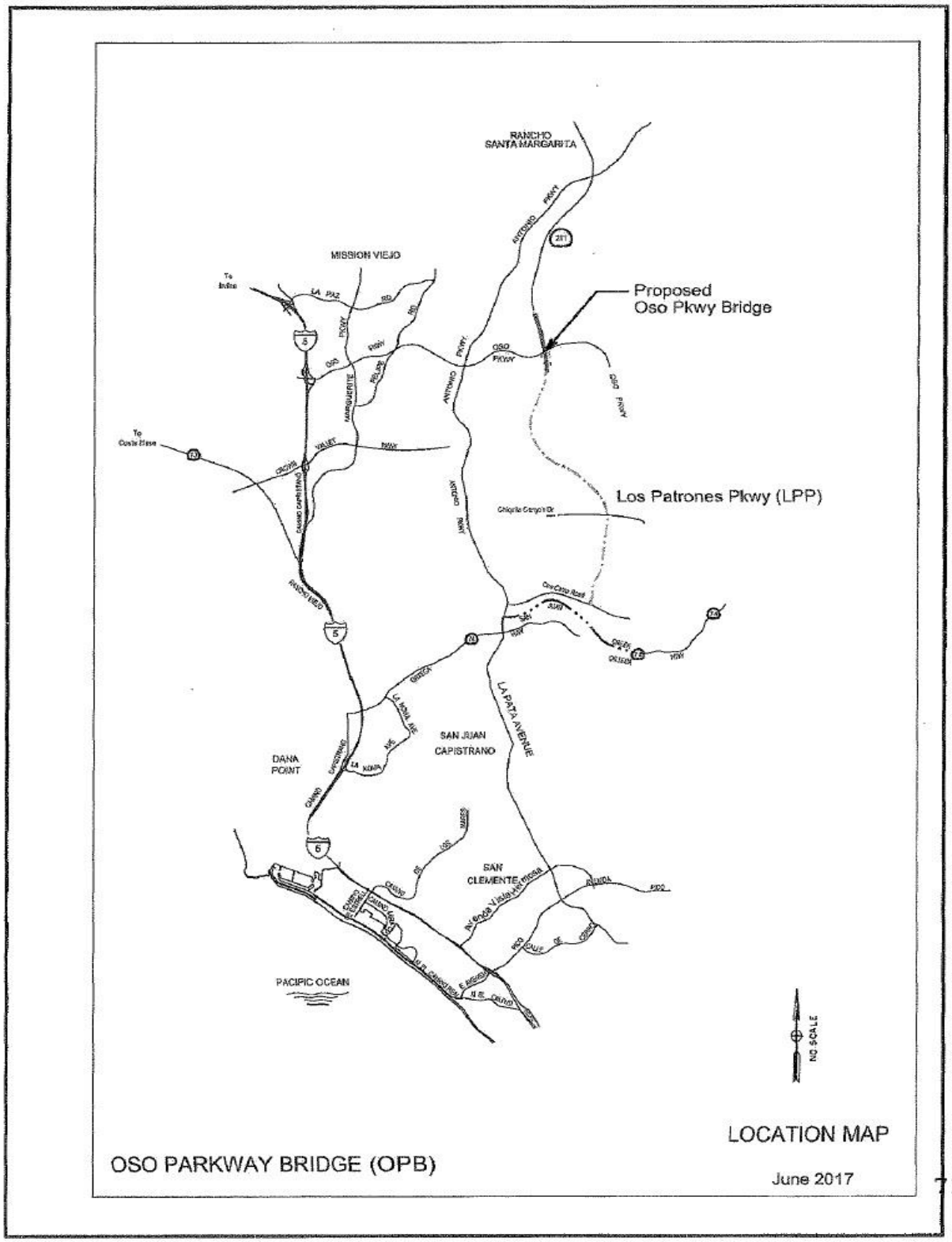
BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.

APPENDIX A



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Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

NO FEE

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County of Orange
NOTICE OF DETERMINATION

Filing Fee is exempt per Gov. Code 6103

TO: County Clerk, County of Orange

FROM: OC Public Works, 300 N. Flower Street, Santa Ana, CA 92703

SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the Public Resources Code

Project Title: IP 15-252 - Oso Parkway Bridge Project	**Type of Document:** Addendum IP 15-252 to FEIRs 584 & 589.
State Clearinghouse Number: 2003021141 and 2006061140	**Previously certified or adopted? YES If yes, provide document number and certification date:** FEIR 584, certified 10/24/2006 and FEIR 589 certified 11/8/2004
Contact Persons: Robyn Uptegraff, Asst. Director, OCPW	**Telephone:** 714-667-3255
Applicant: County of Orange	**Address:** 300 North Flower Street, Santa Ana, CA 92702
Project Location: The proposed Project site is located in the southern part of unincorporated Orange County, California at the current terminus of SR-241 and at the northernmost part of the Ranch Plan area. The site is bound by the City of Rancho Santa Margarita to the north of Oso Parkway and unincorporated Orange County south of Oso Parkway.	
Project Description: The County of Orange (County), OC Public Works Department, along with the Foothill/Eastern Transportation Corridor Agency (F/ETCA), in cooperation with the California Department of Transportation (Caltrans) District 12, is proposing to implement the Oso Parkway Bridge Project (Project). The F/ETCA proposes to replace the existing Oso Parkway elevated roadway with a bridge and to close the gap between the southern terminus of State Route 241 (SR-241) and the northern terminus of the approved alignment for Los Patrones Parkway in South Orange County.	

30-2016-614

Notice is hereby given that the **County of Orange** as lead agency, OC Public Works, has made the following determination on the above-described project:

1. The project was approved by OC Public Works Director on June 10, 2016
2. The project **will not have** a significant effect on the environment.
   - ☒ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   - ☐ A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation Measures **were** incorporated into the project through conditions of approval and project design.
4. For this project Mitigation Monitoring Plan/Program was **Adopted**
5. For this project a Statement of Overriding consideration was **Adopted**
6. Findings **were** made pursuant to CEQA Guidelines 15091 (Statement of Facts and Findings).
7. A copy of the **FEIRs** and the record of the project approval is on file and may be examined at: **OC Development Services, 300 N. Flower Street, First Floor, Santa Ana, CA 92702-4048. (714) 667-8888**

FILED
JUN 14 2016
ORANGE COUNTY CLERK-RECORDER DEPARTM
BY: NA DEPU

Date: 6/10/16

POSTED
JUN 14 2016
HUGH NGUYEN, CLERK-RECORDER
BY: NA DEPUTY

Signature: Chris Uzelac
Title: Planner

Fish & Game Fee Finding:
FEIR Filing Fees Previously Paid

CUD Revised 06/24/14

Exhibit "G"

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